

(ii) Meteorological observations exclusively; or

(iii) Other meteorological information exchanged between meteorological offices.

(5) Aeronautical administrative messages—

(i) Concerning the operation or maintenance of facilities essential to the safety or regulatory of aircraft operation;

(ii) Essential to efficient functioning of aeronautical telecommunications; or

(iii) Between civil aviation authorities concerning aircraft operation.

(6) Notices to airmen.

(b) The following messages may only be relayed through the FAA communications systems:

(1) Flight regularity messages—

(i) Addressed to the point of intended landing and to not more than two other addressees in the general area of the route segment of the flight to which the message refers, containing information required for weight and balance computation and remarks essential to the rapid unloading of the aircraft;

(ii) Concerning changes, taking effect within 72 hours, in aircraft operating schedules;

(iii) Concerning the servicing of aircraft en route or scheduled to depart within 48 hours;

(iv) Concerning changes in the collective requirements for passengers, crew, or cargo of aircraft en route or about to depart, if the changes are caused by unavoidable deviations from normal operating schedules and are necessary for flight regularity;

(v) Concerning non-routine landings to be made by aircraft en route or about to depart;

(vi) Concerning parts or materials urgently needed to operate aircraft en route or scheduled to depart within 48 hours; or

(vii) Concerning pre-flight arrangement of air navigation services and, in the case of non-scheduled or irregular operations, operational servicing of aircraft scheduled to depart within 48 hours.

(2) Messages originated by and addressed to aircraft operating agencies or their representatives that directly bear on the efficient and economic conduct or day to day operations, if adequate non-United States communications facilities are not available and the messages concern—

(i) Matter described in paragraph (b)(1) of this section, but not meeting the time limitations described in paragraph (b)(1) of this section;

(ii) Aircraft parts, equipment, or supplies, air navigation or communications, or essential ground facilities;

(iii) Train or hotel reservations for passengers or employees;

(iv) Lost baggage or personal effects;

(v) Tickets or cargo shipments and payment therefore;

(vi) Location of passengers and cargo;

(vii) New or revised passenger or cargo rates;

(viii) Crew assignments and similar operations personnel matters taking effect within 7 days;

(ix) Post flight reports for record purposes;

(x) Publicity and special handling regarding dignitaries; or

(xi) Reservations, when originated by aircraft operating agencies to secure space required in transport aircraft.

#### § 189.5 Limitation of liability.

The United States is not liable for any omission, error, or delay in transmitting or relaying, or for any failure to transmit or relay, any message accepted for transmission or relayed under this part, even if the omission, error, delay, or failure to transmit or relay is caused by the negligence of an employee of the United States.

### PART 191—PROTECTION OF SENSITIVE SECURITY INFORMATION

Sec.

191.1 Application and definitions.

191.3 Records and information withheld by the Federal Aviation Administration.

191.5 Records and information protected by others.

191.7 Sensitive security information.

AUTHORITY: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 11705–44706, 44901–44907, 44913–44914, 44932, 44935–44936, 46105.

SOURCE: Docket No. 27965, 62 FR 13744, Mar. 21, 1997, unless otherwise noted.

#### § 191.1 Applicability and definitions.

(a) This part governs the release, by the Federal Aviation Administration

and by other persons, of records and information that has been obtained or developed during security activities or research and development activities.

(b) For purposes of this part, “*record*” includes any writing, drawing, map, tape, film, photograph, or other means by which information is preserved.

(c) The authority of the Administrator under this part is also exercised by the Assistant Administrator for Civil Aviation Security and the Deputy Assistant Administrator for Civil Aviation Security, and any other individual formally designated to act in their capacity. For matters involving the release or withholding of information and records containing information described in § 191.7 (a) through (g), and related documents described in (l), the authority may be further delegated. For matters involving the release or withholding of information and records containing information described in § 191.7 (h) through (k), and related documents described in (l), the authority may not be further delegated.

[Doc. No. 27965, 62 FR 13744, Mar. 21, 1997; Amdt. 191–4, 62 FR 15752, Apr. 2, 1997]

**§ 191.3 Records and information withheld by the Federal Aviation Administration.**

(a) Except as provided in § 191.3 (c) and (d), and notwithstanding 5 U.S.C. 552 or other laws, the records and information described in §§ 191.7 and 191.3(b) are not available for public inspection or copying, nor is information contained in those records released to the public.

(b) The Administrator prohibits disclosure of information developed in the conduct of security or research and development activities under 49 U.S.C. 40119 if, in the opinion of the Administrator, the disclosure of such information would:

(1) Constitute an unwarranted invasion of privacy (including, but not limited to, information contained in any personnel, medical, or similar file);

(2) Reveal trade secrets or privileged or confidential information obtained from any person; or

(3) Be detrimental to the safety of persons traveling in air transportation.

(c) If a record contains information that the Administrator determines

cannot be disclosed under this part, but also contains information that can be disclosed, the latter information, on proper Freedom of Information Act request, will be provided for public inspection and copying.

However, if it is impractical to redact the requested information from the document, the entire document will be withheld from public disclosure.

(d) After initiation of legal enforcement action, if the alleged violator or designated representative so requests, the Chief Counsel, or designee, may provide copies of portions of the enforcement investigative report (EIR), including sensitive security information. This information may be released only to the alleged violator or designated representative for the sole purpose of providing the information necessary to prepare a response to the allegations contained in the legal enforcement action document. Such information is not released under the Freedom of Information Act. Whenever such documents are provided to an alleged violator or designated representative, the Chief Counsel or designee advises the alleged violator or designated representative that—

(1) The documents are provided for the sole purpose of providing the information necessary to respond to the allegations contained in the legal enforcement action document; and

(2) Sensitive security information contained in the documents provided must be maintained in a confidential manner to prevent compromising civil aviation security, as provided in § 191.5 of this part.

**§ 191.5 Records and information protected by others.**

(a) Each airport operator, air carrier, indirect air carrier, foreign air carrier, and person receiving information under § 191.3(d) of this part; and each individual employed by, contracted to, or acting for an airport operator, air carrier, indirect air carrier, or foreign air carrier; and each person receiving information under § 191.3(d) of this part, shall restrict disclosure of and access to sensitive security information described in § 191.7 (a) through (g), (j), (k), and as applicable (l), to persons with a need-to-know, and shall refer requests

by other persons for such information to the Administrator.

(b) A person has a need-to-know sensitive security information when the information is necessary to carry out FAA-approved or directed aviation security duties; when the information is necessary to supervise or otherwise manage the individuals carrying out such duties; to advise the airport operator, air carrier, indirect air carrier, or foreign air carrier regarding the specific requirements of any FAA security related requirements; or to represent the airport operator, air carrier, indirect air carrier, foreign air carrier, or person receiving information under § 191.3(d) of this part, in connection with any judicial or administrative proceeding regarding those requirements. For some specific information the Administrator may make a finding that only specific persons, or classes of persons, have a need-to-know.

(c) When sensitive security information is released to unauthorized persons, any air carrier, airport operator, indirect air carrier, foreign air carrier, or individual with knowledge of the release shall inform the Administrator.

(d) Violation of this section is grounds for a civil penalty and other enforcement or corrective action by the FAA.

#### **§ 191.7 Sensitive security information.**

Except as otherwise provided in writing by the Administrator as necessary in the interest of safety of persons traveling in air transportation, the following information and records containing such information constitute sensitive security information:

(a) Any approved or standard security program for an air carrier, foreign air carrier, indirect air carrier, or airport operator, and any security program that relates to United States mail to be transported by air (including that of the United States Postal Service and of the Department of Defense); and any comments, instructions, or implementing guidance pertaining thereto.

(b) Security Directives, Information Circulars, and any comments, instructions, or implementing guidance pertaining thereto.

(c) Any profile used in any security screening process, including for persons, baggage, or cargo.

(d) Any security contingency plan or information and any comments, instructions, or implementing guidance pertaining thereto.

(e) Technical specifications of any device used for the detection of any deadly or dangerous weapon, explosive, incendiary, or destructive substance.

(f) A description of, or technical specifications of, objects used to test screening equipment and equipment parameters.

(g) Technical specifications of any security communications equipment and procedures.

(h) As to release of information by the Administrator: Any information that the Administrator has determined may reveal a systemic vulnerability of the aviation system, or a vulnerability of aviation facilities, to attack. This includes, but is not limited to, details of inspections, investigations, and alleged violations and findings of violations parts 107, 108, or 109, or § 129.25, 129.26, of § 129.27 of this chapter, and any information that could lead the disclosure of such details, as follows:

(1) As to events that occurred less than 12 months before the date of the release of the information, the following are not released: the name of an airport where a violation occurred, the regional identifier in the case number, a description of the violation, the regulation allegedly violated, and the identity of the air carrier in connection with specific locations or specific security procedures. The FAA may release summaries of an air carrier's total security violations in a specified time range without identifying specific violations. Summaries may include total enforcement actions, total proposed civil penalty amounts, total assessed civil penalty amounts, number of cases opened, number of cases referred by Civil Aviation Security to FAA counsel for legal enforcement action, and number of cases closed.

(2) As to events that occurred 12 months or more before the date of the release of information, the specific gate or other location on an airport where an event occurred is not released.

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(3) The identity of the FAA special agent who conducted the investigation or inspection.

(4) Security information or data developed during FAA evaluations of the air carriers and airports and the implementation of the security programs, including air carrier and airport inspections and screening point tests or methods for evaluating such tests.

(i) As to release of information by the FAA: Information concerning threats against civil aviation.

(j) Specific details of aviation security measures whether applied directly

by the FAA or regulated parties. This includes, but is not limited to, information concerning specific numbers of Federal Air Marshals, deployments or missions, and the methods involved in such operations.

(k) Any other information, the disclosure of which the Administrator has prohibited under the criteria of 49 U.S.C. 40119.

(l) Any draft, proposed, or recommended change to the information and records identified in this paragraph.